

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: CS/SB 226

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Surplus Lands

DATE: March 14, 2006

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Herrin | Yeatman | CA | Fav/CS |
| 2. | | | EP | |
| 3. | | | GA | |
| 4. | | | WM | |
| 5. | | | RC | |
| 6. | | | | |

I. Summary:

The committee substitute (CS) provides that real property titled in the name of the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) or the Florida Department of Transportation (FDOT) and which meets certain criteria are “strategic asset lands.” Also, the Board of Trustees may designate land to which it holds title as “strategic asset management land.” The Department of Management Services (DMS) is authorized to manage real property designated as strategic asset management land and to contract for professional services to assist with these duties.

The CS requires DMS to propose uses for strategic asset lands and DMS receives 50 percent of any proceeds from the disposition of strategic asset lands based on a DMS proposal. These funds are distributed to the Florida Facilities Pool Working Capital Trust Fund to be used by DMS to develop and operate the strategic asset land management activities authorized under s. 253.0342, F.S., to correct capital deficiency needs of the trust fund, and to retire debt and pay debt service charges incurred under the Florida Building and Facilities Act.

The CS creates section 253.0342 of the Florida Statutes.

II. Present Situation:

Chapter 253, F.S., governs the acquisition, administration, or disposition of lands to which title has vested or will vest in the Board of Trustees. The Board of Trustees is authorized to make a determination that lands to which it holds title are no longer needed and may dispose of those lands by an affirmative vote of at least three members.¹ For conservation lands, the Board of

¹ Section 253.034(6), F.S.

Trustees must determine that the lands are no longer needed for conservation purposes before voting to dispose of the lands by an affirmative vote of at least three members.²

Section 253.034(6)(c), F.S., requires the Division of State Lands within the Department of Environmental Protection (DEP) to review, at least every 10 years, the nonconservation lands to which the Board of Trustees holds title and to recommend to the board whether those lands should be retained in public ownership or disposed of by the board. Before the Board of Trustees decides whether to surplus lands under s. 253.034(6), F.S., the Acquisition and Restoration Council must make recommendations to the board concerning the request to surplus.³ After reviewing the council's recommendations, the Board of Trustees must determine whether the lands that have been identified for surplus should be held for other public purposes or are no longer needed.⁴

There is also a process for a public or private entity or person to request that lands be surplus. The request must go to the lead managing agency for review and a recommendation to the council. The lead agency has 90 days to complete the review or the request must be scheduled for a hearing at the next regularly-scheduled meeting of the council.⁵ Proceeds from the sale of surplus lands under s. 253.034(6), F.S., go back into the fund from which the lands were acquired or, if the fund no longer exists, to an appropriate management fund for the agency that managed the property before it was sold as surplus.⁶

Section 253.0341, F.S., allows counties and municipalities to submit a request to surplus state lands directly to the Board of Trustees. This expedited process may be used for requests to surplus conservation or nonconservation lands. The Board of Trustees has the authority to surplus state-owned nonconservation lands without the review of, or a recommendation from, the council. However, a county or local government request to surplus conservation lands is subject to review by, and a recommendation from, the council.⁷ The Board of Trustees must consider a request to surplus nonconservation lands under this section within 60 days after receipt. Requests to surplus conservation lands must be considered by the Board of Trustees within 120 days.⁸

Currently, staff in the Public Land Administration Asset Management Section (public lands section) within DEP identifies lands that are no longer needed for a public purpose for the Board of Trustees and takes those lands through the surplus process. This public lands section is also responsible for marketing and selling surplus lands.

Lands forfeited to the state under the Racketeer Influenced and Corrupt Organization act (RICO) and the Murphy Act are maintained by the public lands section. Where it is determined to be economically feasible, the public lands section markets and sells RICO and Murphy Act property.

² Section 253.034(6), F.S.

³ Section 253.034(6)(e), F.S.

⁴ Section 253.034(6)(i), F.S.

⁵ Section 253.034(6)(j), F.S.

⁶ Section 253.034(6)(k), F.S.

⁷ Section 253.0341(1), F.S.

⁸ Section 253.0341(2), F.S.

Florida Department of Transportation

Chapter 337, F.S., governs the contracting, acquisition, disposal, and use of real property by the FDOT. Specifically, s. 337.25, F.S., requires FDOT to evaluate whether the real property, that was acquired after December 31, 1988, and the state has owned for 10 or more years and which is not within a transportation corridor or within the right-of-way for a transportation facility, should be retained or sold. In some instances, real property acquired by FDOT and other transportation agencies for right of way may be larger (due to uneconomic remainders) than is actually required for projects. The FDOT has the authorization to sell the real property, regardless of whether the land is vacant or improved, if FDOT determines the property is not needed for the construction, operation, or maintenance of a transportation facility.⁹ In certain circumstances, the FDOT is required to give the local government where the property is located a first right of refusal.¹⁰ Section 337.25(4), F.S., outlines the other options that FDOT has for disposing of real property. As an alternative to disposing of the property, the FDOT may also convey a leasehold interest to these properties for commercial or other purposes.¹¹

III. Effect of Proposed Changes:

Section 1 creates s. 253.0342, F.S., relating to strategic asset land management. For the purposes of this section, the term “land” includes improvements. The term “strategic asset land” means an interest in real property to which title is or will be vested in:

- the Board of Trustees and:
 - Was acquired under RICO or the Murphy Act;
 - Is not designated by the Board of Trustees as strategic asset land,¹² conservation land, sovereign and state submerged land, land of the Cross Florida Barge Canal, swamp and overflow land, or educational land; and
 - Is not leased for an agricultural or mining purpose.
- the FDOT under ss. 337.25 and 337.29, F.S., and is not being used for transportation purposes and is not identified for use in FDOT’s work program or long-range transportation plans.

Property encumbered by a restriction that prohibits its use for purposes other than transportation is excluded from this provision.

Subsection (2) of s. 253.0342, F.S., authorizes DMS to manage strategic asset management land and to contract for professional services to assist with these duties. Subsection (3) requires DMS to identify potential uses for strategic asset lands and explore cooperative ventures and market opportunities. The DMS shall propose the identified uses for strategic asset lands to the Board of Trustees or the FDOT, as appropriate. The CS specifies that the possible uses for strategic asset lands include conservation land or to facilitate the acquisition of conservation land, for multiple or single purposes, for transportation purposes, or for the purposes of a governmental entity.

⁹ Section 337.25(4), F.S.

¹⁰ Section 337.25(4), F.S.

¹¹ Section 337.25(5), F.S.

¹² This definition should be clarified to show that lands already designated by the Board of Trustees as strategic asset lands are to be disposed of in the same manner as those real properties meeting the criteria in subsection (1), if this is the intent.

Subsection (4) of s. 253.0342, F.S., requires the Division of State Lands¹³, DEP, and FDOT to include DMS in developing and maintaining certain property inventories. Subsection (5) provides that s. 253.0342, F.S., does not affect the land exchange program for conservation lands that is administered by the Division of State Lands. It also authorizes the Board of Trustees to designate lands to which it holds title and is not in “a conservation use” as surplus lands and to exchange those surplus lands to benefit the conservation land acquisition program.

Subsection (6) of s. 253.0342, F.S., allows the Board of Trustees to designate land to which it holds title as “strategic asset management land.”¹⁴ This term differs from “strategic asset land” as defined in subsection (1) of this new section. Subsection (7) requires the proceeds from transactions involving strategic asset lands which are realized as the result of a proposal by DMS shall be deposited in the Florida Facilities Pool Working Capital Trust Fund. These funds will be distributed from the trust fund to DMS to reimburse each party for the costs incurred to execute the transaction. The remaining monies are to be distributed as follows:

- Fifty percent of the funds derived from the disposition of strategic asset lands titled in the Board of Trustees shall be distributed to the Internal Improvement Trust Fund and the remaining 50 percent shall go to the Florida Facilities Pool Working Capital Trust Fund.
- Fifty percent of the funds derived from the disposition of strategic asset lands titled in the FDOT shall be distributed to the State Transportation Trust Fund and the remaining 50 percent shall go to the Florida Facilities Pool Working Capital Trust Fund.

The funds distributed to the Florida Facilities Pool Working Capital Trust Fund, as described above, must be used by DMS to develop and operate the strategic asset land management activities authorized under s. 253.0342, F.S., to correct capital deficiency needs of the trust fund, and to retire debt and pay debt service charges incurred under the Florida Building and Facilities Act.

Section 2 provides the act shall take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ The reference to the Division of State Lands may be redundant because the division is within DEP.

¹⁴ If the intent is that the Board of Trustees may designate lands to which it holds title and that meet the criteria in subsection (1) as strategic asset management lands, a cross-reference is needed.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This CS requires that a percentage of funds from the disposal of certain lands titled in the Board of Trustees shall be distributed to the Florida Facilities Pool Working Capital Trust Fund. This seems to conflict with section 253.01(1), F.S., which requires the proceeds from the sale of specified lands titled in the Board of Trustees to be deposited in the Internal Improvement Trust Fund.

Sections 253.034 and 337.25, F.S., as discussed above, provide for the disposal of certain lands titled in the Board of Trustees and the FDOT, respectively. The procedures for disposing of “strategic asset land” contained in this bill may conflict with these existing provisions. This could be corrected with an exemption from sections 253.034 and 337.25, F.S., for those lands that are designated strategic asset lands.

Also, certain real property acquired by FDOT and other tolling agencies is acquired with proceeds from revenue bonds. FDOT and the other tolling agencies have covenanted to the bond holders to protect the assets and revenues of those transportation systems. Those bond covenants may be breached if real property acquired by proceeds from revenue bonds are later surplus and revenues from those sales are diverted to uses outside the bond covenants.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
